

Remarks

Claims 1-8 are canceled, and claim 61 is added. Claims 9-61 are pending.

New claim 61 is supported by originally filed claims 20 and 40 and in Example 10 of the specification.

In response to the Restriction Requirement mailed October 1, 2003, Applicant provisionally elects, with traverse, the claims of Group 45 (claims 31-41) directed to an isolated and purified DNA molecule comprising a DNA segment comprising a *pikA* promoter, an expression cassette comprising a *pikA* promoter operably linked to a DNA molecule comprising a DNA segment comprising an open reading frame or a portion thereof, e.g., a DNA segment encoding a thioesterase domain of *pikAIV*, and a host cell transformed with a plasmid comprising the expression cassette. Reconsideration and withdrawal of the Restriction Requirement, in view of the remarks herein, is respectfully requested.

The Restriction Requirement is traversed on the basis that the inventions are closely related. For example, claims directed to an isolated and purified DNA molecule comprising a DNA segment comprising a *pikA* promoter, an expression cassette comprising a *pikA* promoter operably linked to a DNA molecule comprising a DNA segment comprising an open reading frame or a portion thereof, and a host cell transformed with a plasmid comprising the expression cassette (claims 31-41; Group 45) are clearly related to claims directed to an isolated and purified nucleic acid segment comprising a nucleic acid sequence comprising a macrolide biosynthetic gene cluster encoding polypeptides which synthesize methymycin, pikromycin, neomethymycin, narbomycin, or a combination thereof, or a biologically active variant or fragment thereof, i.e., a *met/pik* gene cluster, or a host cell, the genome of which is augmented with the nucleic acid segment (claims 12-14, 16-18 and 28; Group 12).

The Restriction Requirement is also traversed on the basis that Restriction Requirements are optional in all cases. M.P.E.P. § 803. If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it arguably may include claims to distinct or independent inventions. M.P.E.P. § 803. Moreover, it is submitted that Applicant should not be required to incur the additional costs associated with the filing of forty eight divisional applications in order to obtain protection for the claimed

SUPPLEMENTAL PRELIMINARY AMENDMENT AND RESPONSE TO RESTRICTION REQUIREMENT

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subject matter. For instance, due to the relatedness of at least the claims in Groups 12 and 45, the claims in Groups 12 and 45 can be efficiently and effectively searched in a single search with no additional burden placed on the Examiner.

Thus, the Restriction Requirement is properly traversed. Accordingly, reconsideration and withdrawal of the Restriction Requirement is respectfully requested.

The Examiner is invited to telephone Applicant's attorney (612-373-6959) to facilitate prosecution of this application. Please charge any additional fees deemed necessary to Deposit Account 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 3/10 day of November, 2003.

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